

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION Altus, Oklahoma

FLIGHTSAFETY SERVICES CORP.

Employer

and

Case 17-RC-12321

THE PROFESSIONAL ASSOCIATION OF
TANKER INSTRUCTORS (PATI)

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) (7) of the Act for the following reasons:

The Employer is a Delaware corporation engaged in the business of training military air crews in the operation of military aircraft for the United States Air Force, at various locations throughout the United States, including Altus Air Force Base, in Altus, Oklahoma, the only location involved in this case. The Employer maintains its administrative offices in Centennial, Colorado.

At its facility at Altus Air Force Base (the facility), the Employer provides ground training to military air crews pursuant to contracts with the United States Air Force, on both the KC-135 and C-5 aircraft. The Petitioner seeks to represent a unit of all full-time and regular part-time KC-135 instructors employed by the Employer at the facility. There are approximately 32 employees in the unit proposed by the Petitioner. The Employer argues that the appropriate unit

includes all employees employed in both the KC-135 and C-5 programs at the facility, including pilot instructors, flight engineer instructors, navigator instructors, boom operator instructors, load master instructors, test pilots, test flight engineers, maintenance technicians, lead maintenance technicians, PC technicians, maintenance technicians apprentice or a TEC 1, hardware engineers, software engineers, graphic artists, CAD, instructional developers and programmers, programmer analysts, systems administrators, network administrators, ILS analysts, inventory control specialists, schedulers, Air Force mission support system administrators, administrative specialists, and quality assurance specialists. For the reasons discussed below, I find that an appropriate unit includes all employees employed in both the KC-135 and C-5 training programs.

The parties stipulated that the following named employees should be excluded from any unit found appropriate, as supervisors within the meaning of Section 2(11) of the Act, because they have the authority to hire and fire, and effectively to recommend discipline, and also have other responsibilities indicative of supervisory status:

Linda C. Barker	-	Configuration & Data Mgmt Supervisor
Thomas T. Boehm	-	Site Manager
Brenda J. Bowen	-	Manager of ISD
William W. Bowen, Jr.	-	Manager/Information System
Walter D. Buck	-	Pilot & Navigator Instructor Supervisor
Larry L. Cavazos	-	Loadmaster Instructor Supervisor
Jeff L. Coon	-	Logistics Manager
Teena Marie Duffy	-	TMS Manager
John W. Hagen III	-	Engineering Support Center (ESC) Manager
Susan A. Hamilton	-	Administrative Supervisor
Larry D. Henton	-	Training Manager
Helen Hilber	-	Administrative Coordinator

William R. Johnson	-	Pilot Instructor Supervisor
Marshall W. Malseed	-	C & DM/Engineer Systems Manager
Phillip W. Marshall	-	Site Manager
William V. Moore	-	Integrated Logistics Support (ILS) Manager
Hubert J. Rackley	-	Summative Evaluation Manager
James Reese	-	Boom Operator Instructor Supervisor
John T. Rodgers	-	Deputy Consolidated Maintenance Manager
Dale L. Saul	-	Consolidated Maintenance Manager
Robert A. Starchman	-	Flight Engineer Instructor Supervisor
Andre S. Violette	-	Courseware Support Center Manager
Kirk A. Widener	-	QA Manager
Yamamoto, Hidemasa		Training System Support Center Manager

Based upon the parties' stipulation, and the record evidence, I find that the above-named individuals possess and exercise supervisory authority within the meaning of Section 2(11) of the Act, and they are therefore excluded from the unit found appropriate.

The Employer's Business Operations

The KC-135 is a fuel-tanker primarily used for in-flight refueling of other aircraft, and secondarily for cargo transport. The C-5 is used to transport cargo and military personnel. The Employer's training programs for these aircraft consist of academic/classroom training, computer-based training, and flight simulator training. The training programs last approximately 10 weeks. Training for the KC-135 is located in Building 179, while training for the C-5 takes place primarily in Buildings 87, 88, and 89. Students in the C-5 program also have access to Building 179 to train on a program called the Air Force Mission Support System (AFMSS). AFMSS is a flight planning program.

The KC-135 training program includes the following job classifications: pilot instructors, navigator instructors, boom operator instructors, test pilots, maintenance technician, lead maintenance technicians, PC (personal computer) technicians, maintenance technician apprentices or TEC 1's, hardware engineers, software engineers, graphic artists, CAD, instructional developers and programmers, programmer analysts, systems administrators, network administrators, Integrated Logistics Support (ILS) analysts, inventory control specialists, schedulers, Air Force Mission Support System (AFMSS) administrators, administrative specialists, and quality assurance specialists.

The C-5 training program includes the following job classifications: pilot instructors, flight engineer instructors, load master instructors, test pilots, test flight engineers, maintenance technicians, lead maintenance technicians, PC technicians, maintenance technician apprentices or TEC 1's, hardware engineers, software engineers, graphic artists, CAD, instructional developers and programmers, programmer analysts, systems administrators, network administrators, ILS analysts, inventory control specialists, schedulers, Air Force Mission Support System (AFMSS) administrators, administrative specialists, and quality assurance specialists.

In each program, the instructors, including pilot instructors, flight engineer instructors, navigator instructors, boom operator instructors, and load master instructors, instruct crew members in the classroom and on flight simulators in their respective crew positions. For example, pilot instructors instruct pilots, navigator instructors instruct navigators, etc. The instructors then assign grades to the students based upon the level of competence that the instructor believes the student is exhibiting on a given task. Instructors are specific to the aircraft on which they train. For example, the C-5 is not a refueling aircraft. Therefore, the C-5 program

does not include a boom-operator instructor, because that crew position is unique to the KC-135 aircraft.¹ Conversely, the loadmaster position is unique to the C-5, a cargo transport aircraft.

Test pilots test the flight simulators to ensure that they are in compliance with generalized specifications. Test flight engineers, who work only in the C-5 program, assist in running tests on the C-5 simulator.

The maintenance employees, including maintenance technicians, lead maintenance technicians, PC technicians, and maintenance technician apprentices or TEC 1's, work closely with the instructors to maintain the computers, flight simulators and other training equipment. Maintenance employees are cross-trained on equipment in both the KC-135 and C-5 programs, and perform work in both areas. The record indicates that instructors have daily contact with the maintenance employees, and assist them in making various repairs to equipment. The instructors then authorize the equipment as fit for use.

The courseware employees, comprised of hardware engineers, software engineers, graphic artists, CAD, instructional developers and programmers, and programmer analysts, work with the instructors to ensure that the course materials are current, and that they accurately reflect the training which is actually taking place in the programs. The courseware employees are assigned to a specific training program, either the KC-135 or the C-5, but their work is similar, regardless of the program to which they are assigned, and they are therefore capable of performing work in either training program. The network administrator maintains and administers the network of computers used in the training of students in the programs.

¹ Boom operators are responsible for directing the device which attaches to the plane being refueled.

The Logistics Support (ILS) analysts, and inventory control specialists, are responsible for controlling and tracking the inventory of spare parts needed to make changes and repairs to the instructional equipment. The schedulers are responsible for maintaining the schedules for classroom and flight simulator training.

The AFMSS administrator maintains the AFMSS system. The AFMSS administrator has responsibilities in both the KC 135 and C-5 programs. The administrative specialists are on-site human resources representatives who perform various administrative tasks in their respective programs. Finally, the quality assurance specialists are responsible for evaluating the Employer's performance and compliance with the United States Air Force's program requirements.

All of the Employer's employees are subject to the same policies and procedures, have the same payday, utilize the same forms, and enjoy the same benefits, i.e. life insurance, paid holidays, vacation policies, accident insurance, long and short-term disability insurance, dental insurance, legal assistance program, medical insurance plan, flexible-spending account program, and 401(k) plan. The only differences between the benefits enjoyed by employees in the KC-135 program and those in the C-5 program is that amounts of the contributions by the employee and the Employer differ with respect to the medical insurance program, the 401(k) matching program, and the "flexible dollars" available to employees for purchasing benefits. All employees have access to the same recreational facilities at the facility.

Procedural History

Although there is no collective-bargaining history among the employees discussed above, the Petitioner has filed two previous petitions, in Cases 17-RC-11766 and 17-RC-11858, in which it sought to represent only those employees employed in the Employer's KC-135 training program. In Case 17-RC-11766, a Decision and Order issued on July 30, 1999, finding that the appropriate bargaining unit included all employees employed in the KC-135, C-5, and C-141² training programs. In Case 17-RC-11858, a Decision and Direction of Election issued on May 23, 2000, in which the Regional Director again concluded that the appropriate unit was comprised not only of the KC-135 employees, but the C-5 and C-141 employees. In both cases, the Regional Director concluded that the employees in the three training programs shared a sufficient community of interest and functional integration to warrant their inclusion in a single appropriate unit.

In the instant case, the Petitioner has further narrowed its requested unit by seeking to represent only the instructors employed in the Employer's KC-135 program, specifically the pilot instructors, navigator instructors, and boom operator instructors. The Petitioner contends that such a unit is appropriate based on three arguments: 1) that the foregoing instructors are professional employees as defined in the Act, 2) that the KC-135 instructors have no community of interest with KC-135 employees or any employees in the C-5 training program, and 3) that the Employer has negotiated separate wages and benefits for the C-5 instructor employees.

² The Employer has since discontinued its C-141 training program at Altus AFB.

Analysis and Conclusions

KC-135 Instructors Are Not Professional Employees Within The Meaning Of The Act

The Petitioner argues that the KC-135 instructors are professional employees within the meaning of the Act, who may not be included in a bargaining unit with non-professionals unless they expressly choose to be included. *Sonotone Corp.*, 90 NLRB 1236 (1950). Section 2(12) of the National Labor Relations Act (the Act), defines a professional employee as:

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

The requirements of subsection (a) of Section 2(12) of the Act are not to be read in the disjunctive. Employees must satisfy each of the four requirements in subsection (a) before they qualify as professional employees. See *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 517 (1998) and *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993). In the instant case, I find that the instructors, as a group, fail to meet the definition of professional employees in three respects. First, the evidence does not support a finding that their work is predominately intellectual and varied in character. The instructors instruct crew members in largely mechanical, routine flight operations. Although instructors do use independent discretion to

assign grades to their students, and to evaluate the courseware used to teach students, their work is not intellectual in nature. The Petitioner has thus failed to show that the instructors' work satisfies the intellectual requirement of subsection (a)(i) of the definition of professional employees. The instructors' work is standardized into a 10 week format during which training is to be completed. The instructors' work is further standardized through the detailed courseware and training materials utilized to train crew members on their respective aircraft. Finally, the Petitioner has failed to establish that the instructor positions require knowledge of an advanced type acquired by a prolonged course of specialized intellectual instruction and study. Although pilot instructors are required to have 4-year degrees, and navigator and boom operator instructors are required to have 2-year associates degrees, there is no requirement that such degrees be related to their job duties. For example, a pilot instructor is not required to have a 4-year degree in aeronautics or another related course of study. Similarly, navigator and boom operator instructors are not required to have educational degrees directly related to their job duties. Therefore, it does not appear that the educational characteristics of the instructors' work require utilization of their degrees. See Greenhorne & O'Mara supra. Based upon the foregoing and the record in its entirety, I find that the Petitioner has failed to show that the instructors are professional employees within the meaning of the Act.

KC-135 Instructors Share A Community Of Interest With Other KC-135 Employees And With Other Employees In The C-5 Program And Maintenance Departments

The Petitioner argues that the KC-135 instructors constitute a separate appropriate unit because they do not share a community of interest with the C-5 employees, and their wages and benefits differ from those of the C-5 instructors. In deciding whether the KC-135 instructors

constitute a separate appropriate unit, it is appropriate to consider not only their community of interest with the C-5 instructors, but also with the C-5 and KC-135 employees. Such an examination reveals that the KC-135 instructors do not have a community of interest which is sufficiently separate from the other KC-135 employees and the C-5 employees to warrant a separate unit comprised only of KC-135 instructors.

In evaluating whether a sufficiently separate community of interest exists, the Board considers factors such as the frequency of contact and interchange with other employees; functional integration; degree of skill and common functions; and commonality of supervision. *Capri Sun, Inc.* 330 NLRB 1124 (2000). KC-135 instructors have daily contact with maintenance employees who perform work on both the KC-135 and C-5 training equipment. The record indicates that the instructors work “hand-in-hand” with the maintenance employees to identify and correct problems with training equipment, and assure the readiness of equipment for the students. Both KC-135 and C-5 instructors train on the AFMSS system, which is located in Building 179. KC-135 instructors also have significant contact with the courseware employees in the development and evaluation of courseware materials. In addition, KC-135 instructors have consistent contact with the schedulers who schedule when they have access to classrooms and training equipment. The foregoing examples of interaction also demonstrate that all of the Employer’s employees are functionally integrated in producing trained crews for the United States Air Force. All employees work pursuant to contracts with the United States Air Force, at Altus Air Force Base, to train crews to operate KC-135 and C-5 aircraft. All instructors direct students in the classroom and in training devices such as flight simulators, regardless of the

aircraft on which they are training.³ Moreover, employees' skills, particularly those in the support positions, are virtually interchangeable. Employees receive virtually identical benefits⁴, with the only difference being the amount the Employer pays toward those benefits.⁵ Finally, while the employees have separate supervision, the Board has said that this is not a decisive factor standing alone. *Transerv Systems*, 311 NLRB 766 (1993).

Based on the foregoing, I find that all of the Employer's employees who work in the training programs on both the KC-35 and C-5 aircraft, including maintenance employees, constitute an appropriate unit. In view of the foregoing, and inasmuch as the Petitioner has stated that it will not proceed to an election in such a unit,

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by March 10, 2005.

Dated February 24, 2005

at Overland Park, Kansas

/s/ D. Michael McConnell

Regional Director, Region 17

³The fact that the instructors in one program generally are not qualified to work in another program is a function of their specialized expertise arising from their flight experience, and not a lack of community of interest with employees working in the other program.

⁴ Any differences in benefits appear to be a result of having the Air Force contracts for the KC-135 and C-5 training programs negotiated at different times. Despite some differences in the amounts paid, the benefits are identical.

⁵ The Petitioner raised an argument pertaining to differences in wages between the KC-135 and C-5 instructors. A review of the wages shows that they are all comparable, and in the low \$20 per hour range.